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The information in this article is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

DHS issues final rule on STEM OPT extension provisions

Final rule will be issued on March 11, 2016 and will be effective May 10, 2016.

The Department of Homeland Security (DHS) has issued an advance copy of its final rule governing STEM optional practical training (OPT) extension provisions. The final rule paves the way for students with a STEM degree from an accredited U.S. college or university to extend their standard 12-month OPT work authorization by at least one extension of 24 months. The rule makes several changes to the current regulation and also keeps several elements in place. What follows is a brief description of noteworthy items in the final rule.

STEM OPT extension period increased from 17 months to 24 months – Individuals who receive the 24-month extension would have a total of three years of OPT status. In addition, individuals who earn a second STEM degree at a higher educational level would be eligible for an additional 24-month extension (for a total of five years of OPT status). The final rule also allows an F-1 student participating in a 12-month period of post-completion OPT based on a non-STEM degree to use a prior eligible STEM degree at the basis to apply for a 24-month extension as long as both degrees are from accredited institutions and the OPT employment is directly related to the previously obtained STEM degree.

To qualify for a STEM extension, student and employer must prepare and execute a formal training plan that identifies learning objectives and a plan for achieving those objectives – It is possible that employers will be able to use existing training programs to meet the training plan requirement. The responsibility is a joint responsibility between employer and student.

The rule requires that the terms and conditions of STEM OPT (including duties, hours and compensation) must be commensurate with those of similarly situated U.S. workers – In addition, the employer must attest that it has sufficient resources and trained personnel to provide training to the student, the student will not replace a full- or part-time temporary or permanent U.S. worker and the opportunity will help the student attain the training objective.

The Department of Homeland Security (DHS) has discretion to conduct site visits to verify that program requirements are being met – DHS will provide 48-hour notice before any site visit unless a complaint or other evidence of noncompliance with the STEM OPT regulation triggers the visit (in which case DHS may conduct the visit without notice).

As with the prior rule, employers must be enrolled in E-Verify and comply with reporting requirements – In addition, the Cap-Gap extension provision for F-1 students ending OPT before beginning H-1B status is maintained. Students in that situation will keep their work authorization and duration of status until Oct. 1 when their H-1B status begins.

If you have any questions about the proposed changes to immigration law and how it may affect your business or employees, please contact Gene Schaeffer at 608.284.2655 or gschaeffer@gklaw.com; or Monica Santa Maria at 608.284.2624 or msantamaria@gklaw.com.

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